

of the thing demised. "The question," said Parke, Baron, "is whether the machine, when fixed, is parcel of the freehold, and this is a question of fact depending on the circumstances of each case, and principally on two considerations, *first*, the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them; whether it can easily be removed, *integre, salve, et commode*, or not, without injury to itself or the fabric of the building; *secondly*, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, in the language of the civil law, *perpetui usus causâ*, or merely for a temporary purpose, or the more complete enjoyment and use of it as a chattel;" and the conclusion was that the machines had not become a part of the freehold; that they had not lost the character of movable chattels, and were liable to be distrained.

The law in relation to fixtures does not seem to have engaged the attention of the Courts in this state frequently. The only reported cases are those of *Kirwan vs. Latour*, 1 H. & J., 289, and *Coombs and Jardan*, 3 Bland, 284. The latter does not seem to have decided any question bearing upon the present controversy; but the former, which was regarded by the General Court as a case between vendor and vendee, is an authority, to some extent at least, in favor of the Savage Manufacturing Company.

Assuming, therefore, the rule to be that as between mortgagor and mortgagee, the question is whether the thing claimed to be a fixture is so attached as to become parcel of the freehold, which is a question of fact depending on the mode of annexation to the soil or fabric of the house, and the extent to which it is united to them; that is, whether it can be removed or not without injury to itself or the fabric of the building, I am of opinion, upon the evidence in this case, that the machinery furnished by the Savage Manufacturing Company has not become a part of the freehold; that it has not lost the character of movable chattels, and consequently is not covered by, or within, the operation of the mortgages to the Bank and